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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/695,930	95,930 10/29/2003		Walter Brieden	05409/100J061-US2	7047	
7278	7590	03/27/2006		EXAMINER		
DARBY &	DARBY	P.C.	MELLER, MICHAEL V			
P. O. BOX 5257 NEW YORK, NY 10150-5257			ART UNIT	PAPER NUMBER		
NEW TOR	1, 1, 1,	,150 5 2 57		1655		

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)						
	10/695,930	BRIEDEN ET AL.						
Office Action Summary	Examiner	Art Unit						
	Michael V. Meller	1655						
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence add	ress					
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 16(a). In no event, however, may a reply be tin fill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	I. sely filed the mailing date of this con 0 (35 U.S.C. § 133).						
Status								
1) Responsive to communication(s) filed on								
,	action is non-final.							
' =	, 							
closed in accordance with the practice under E	·							
Disposition of Claims								
4)⊠ Claim(s) <u>8,9,14 and 15</u> is/are pending in the ap	plication.							
4a) Of the above claim(s) is/are withdraw	4a) Of the above claim(s) is/are withdrawn from consideration.							
5) Claim(s) is/are allowed.								
6) Claim(s) is/are rejected.								
7) Claim(s) is/are objected to.								
8) Claim(s) 8, 9, 14, 15 are subject to restriction a	nd/or election requirement.							
Application Papers								
9) The specification is objected to by the Examiner								
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.								
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).								
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).								
11)☐ The oath or declaration is objected to by the Exa	aminer. Note the attached Office	Action or form PTC	D-152.					
Priority under 35 U.S.C. § 119								
 12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority documents 2. Certified copies of the priority documents 3. Copies of the certified copies of the priori application from the International Bureau * See the attached detailed Office action for a list of 	have been received. have been received in Application ity documents have been received (PCT Rule 17.2(a)).	on No d in this National S	stage					
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	te	152)					
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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 8 and 9, drawn to a process for the preparation of a compound using chemical means by using an optically active tartaric acid, classified in class 435, subclass various.
- II. Claims 8 and 9, drawn to a process for the preparation of a compound using biotechnological means by using a hydrolase in the presence of an acylating agent, classified in class 530, subclass various.
- III. Claims 14 and 15, drawn to two compounds, classified in class 514, subclass various.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. The methods differ in that the modes of operation are different since the methods of obtaining the compound are materially

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distinct from one another. Also, the methods are not capable of use together since the compounds are made by either process but **not** both at the same time.

Inventions (I and II) and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially distinct process such as evidenced by the claims themselves wherein the compounds can be made by chemical means or biotechnological means, see claim 8.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

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or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael V. Meller Primary Examiner Art Unit 1655

MVM